IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. No. 6739 of 2007

DATE OF DECISION: 9.10.2007

Urea Casale, S.A.

…Petitioner

Versus

The State of Punjab and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Kashmiri Lal Goyal, Advocate,
for the petitioner.

Mr. Amol Rattan Singh, Addl. AG, Punjab,
for the respondents.

JUDGMENT

M.M. KUMAR, J.

The short question raised in this petition filed under Article 226 of the Constitution is whether the Sales Tax Tribunal, Punjab, Chandigarh (for brevity, 'the Tribunal') could have validly exercised its jurisdiction while deciding the rectification application filed under Section 21-A(2) of the Punjab General Sales Tax Act, 1948 (for brevity, 'the 1948 Act'). The petitioner, Urea Casale S.A. is a company having its head office in Switzerland, project office in Mumbai and site office in the premises of National Fertilizers Limited, Nangal. The petitioner which is a specialized company takes contracts for supply of machinery and equipments for Urea

Plants as also provides associated services such as civil and structural work, construction of Frilling Tower, erection, testing and commissioning of Urea Plants, has raised the aforementioned issue by challenging order dated 21.3.2007 (P-11), passed by the Tribunal. The Tribunal initially vide its order dated 8.12.2005 (P-7) had granted relief to the petitioner. However, on rectification application filed by the respondent State, the order dated 8.12.2005 (P-7) was rectified on 21.3.2007 (P-11).

Facts in brief are that the petitioner was registered as a dealer under the provisions of the 1948 Act as well as under the Central Sales Tax Act, 1956 (for brevity, 'the 1956 Act') and was being assessed by the Excise and Taxation Officer-cum-Assessing Authority, Ropar-respondent No. 2. On 22.3.2002, assessment was framed by the Assessing Authority in respect of assessment year 2000-2001 and found that the petitioner was entitled for refund of Rs. 15,27,805/-. The refund was on account of tax deducted at source by the National Fertilizers Limited, a Government company and deposited in Treasury by it. Since refund was not made in terms of order dated 22.3.2002, the assessee filed an application dated 17.3.2003 for refund of the amount. On 30.4.2003, Assistant Excise and Taxation Commissioner, Ropar-respondent No. 3 sent a letter to the Excise and Taxation Commissioner seeking permission to keep the refund due to the petitioner pending till the assessment in the case of sub-contractor i.e. Facts Engineers and Design Organisation (FEDO), a Government of India undertaking is completed. On 26.9.2003 and 23.3.2004, reminders for refund were sent by the petitioner Company.

On scrutiny it was found that order dated 22.3.2002, passed by the Assessing Authority suffered from irregularities/improprieties. Accordingly in exercise of powers under Section 21(1) of the 1948 Act suo moto proceedings were initiated and after issuance of notice dated 3.2.2004 (P-4), Revisional Authority passed an order dated 28.6.2004 and revised the order of the Assessing Authority raising a demand of Rs. 29,44,087/- against the assessee-petitioner (P-5).

The assessee-petitioner filed a revision petition under Section 21(3) of the 1948 Act before the Tribunal (P-6) challenging order dated 28.6.2004 (P-5) passed by respondent No. 2, which was allowed vide order dated 8.12.2005 (P-7) by observing that the alleged transactions were not local sales within the Punjab State as alleged by the Revisional Authority. On 18.4.2006, the petitioner again made an application for refund of the amount of Rs. 15,27,805/-, however, needful has not been done.

In the meanwhile, on 22.3.2006, the State of Punjab made a reference application before the Tribunal along with an application for condonation of delay. On 22.8.2006, the aforementioned reference application was dismissed as withdrawn by the Tribunal with liberty to the State of Punjab to file a afresh one in accordance with law, inasmuch as, no objection was raised by the counsel for the assessee-petitioner (P-8).

On 9.8.2006, the department filed another application under Section 21-A of the 1948 Act before the Tribunal seeking rectification of order dated 8.12.2005, which was passed by the Presiding Officer of the Tribunal in the revision petition preferred by

the assessee-petitioner (P-9). On 18.9.2006, the assessee-petitioner filed objections to the rectification application (P-10). The Tribunal allowed the aforementioned rectification application, vide order dated 21.2.2007 (P-11), holding as under:-

> " I find that order of the Tribunal suffers from mistake apparent from the face of record. It notices clauses of the agreement, which says that ownership of goods shall pass over to the contracted (NFL) outside India and sale shall be complete at that time. The respondent contractor shall not retain any lien on such goods thereafter. It means that the goods were owned and imported by the contracted (NFL) from outside India and not the respondent contractor. Contrary to this position, it was held that the transaction was an interstate sale by transfer of document while goods were in transit from one state to another against C and C-1, E2 forms. The position that the goods were sold to contractee (NFL) by the respondent contractor in the course of inter state trade can't be reconciled with the position that the contracted (NFL) is the importer of goods from outside India. The tribunal has not recorded any definite finding with regard to importation of goods. Further, if the contracted (NFL) had bought the goods in the course of inter state trade from the respondent finding that on what basis the subject goods were delivered to the contract for use in the works contract, whether as a bailee or on principle to principle basis? This has direct bearing on

the tax liability of the respondent contractor. In view of these facts of the case, case law cited by the respondent contractor is of no help to him.

For the reasons recorded above, order of the tribunal suffers from mistake apparent on the face of record and requires rectification. Accordingly, I recall the order of the tribunal dated 8.12.2005 and direct that the case be fixed for fresh hearing on merits."

We have heard learned counsel for the parties at considerable length, minutely perused the impugned order of the Tribunal, dated 21.3.2007 (P-11), passed on the rectification application filed by the respondent State under Section 21-A of the 1948 Act along with other orders, and found that the short question raised in the first para of the judgment is no longer *res integra*. A Division Bench of this Court, of which one of us (M.M. Kumar, J.) is a member, has already considered and decided the aforementioned question in favour of the assessee-petitioner and against the revenue-respondents, while dealing with the case of **Tilak Raj Madan Lal v. State of Punjab, (2007) 30 PHT 368 (P&H).** The instant petition is squarely covered by the Division Bench judgment of this Court in the case of Tilak Raj Madan Lal (supra) wherein provisions of Section 21-A of the 1948 Act, similar provisions of the Central Excise Act, 1944 i.e. Section 35-C(2) and various judgments of Hon'ble the Supreme Court and other High Courts on the issue have been minutely considered.

For the reasons aforementioned, the writ petition is allowed being squarely covered by Division Bench judgment of this

Court in the case of Tilak Raj Madan Lal (supra). Order dated 21.3.2007 (P-11) allowing rectification application of the respondent State is hereby set aside. We restore the order dated 8.12.2005 (P-7).

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 9, 2007
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FIT FOR INDEXING